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From: Michael G. Garrity [michaelggarrity@qwest.net]

Sent: Friday, October 17, 2003 11:51 AM

To: nprm@ttb.gov

Subject: Form Post From Mozilla

name=Liquor Store Owners Association of Montana  
name=Liquor Store Owners Association of Montana  
Address1=Attn: Bea Lunda Address2=608 South Main  
Street City=Conrad State=MT Zip Code=59425  
Comments=Re: Notice No. 4 Flavored Malt Beverages and  
Related Proposals (2001R-136P) Dear Sirs/Madams:  
Michael G. Garrity of the Garrity, Avignone, Banick  
Whetstone Law Firm represents the Liquor Store Owner  
Association of Montana, a Montana non-profit  
corporation (Association). The membership of the  
Association consists of Montanas Agency Franchise  
Liquor Store Agents who operate the Montana State  
Liquor Stores in Montana under Agency Franchise  
Agreements with the State of Montana, Department of  
Revenue, as well as associate members of the liquor  
trade or industry. The Association supports the  
Department of the Treasury and its Alcohol and  
Tobacco Tax and Trade Bureau (TTB) proposed  
amendments to its regulations relating to the  
production, labeling and composition of products  
marketed as flavored malt beverages. The TTB has  
correctly determined that the increased production  
and marketing of flavored malt beverages that derive  
their alcohol content primary from the addition of  
distilled spirits, and not from fermentation,  
requires regulator clarification under the Internal  
Revenue Code of 1986 (IRC) and the Federal Alcohol  
Act (FAA Act) . The regulatory changes proposed by  
TTB will clarify the status of flavored malt  
beverages under the IRC and FAA Act, and provide  
guidance to the State regulatory and tax agencies  
that oversee the taxation and distribution of  
flavored malt beverages. The State of Montana is  
characterized as an alcoholic beverage control state  
under its Montana Alcoholic Beverage Code (MABC),  
Section 16-1-101 through 16-1-143, MCA. Similar to  
the Department of the Treasury and the TTBS  
construction of IRC, the MABC uses the 0.5% alcohol  
by volume threshold as a dividing line between  
beverage products subject to one type of taxation or  
another. Section 16-1-106 (4), MCA. The MABC defines  
beer as a malt beverage containing not more than 7%  
of alcohol by weight and made by the fermentation of  
an infusion or decoction, or combination of both, of  
malt or barley with or without hops or other malted  
cereals. The MABC defines table wine as including  
cider and containing not more than 16% alcohol by  
volume. Wine is defined as an alcoholic beverage from  
normal alcoholic beverage fermentation of wheat or  
other agricultural products, without addition or

natural fermentation generally does not exceed 14% c alcohol by volume. Accordingly, the addition of distilled spirits is required for increased alcohol content beyond the percentage of alcohol volume reached by natural fermentation. TTB has correctly recognized that the rapid growth of the flavored malt beverage sector has left a void requiring clarification for Federal and State taxation and distribution of flavored malt beverages. TTBS proposed rulemaking will satisfy the need for regulatory clarification by classifying any beer or malt beverage containing 0.5% or more alcohol by volume that is derived from distilled spirits, or from distilled spirits in the form of flavors on other materials, as a distilled spirits product. TTB proposed definitions for beer and malt beverages requiring these products to be composed primarily of alcohol from fermentation and that limit contribution of alcohol from added flavors or added ingredients containing alcohol to less than 0.5% alcohol by volume conforms to the IRC and FAA Act, and is supported by the Association. The definitions of beer, ale, porter, stout and other similar fermented beverages in the IRC, as well as the definition of flavored beverages in the FAA Act, supports limiting the amount of alcohol in flavored malt beverages that is not ...made by the alcoholic fermentation... of malted barley with hops .... It is consistent with the IRC and FAA Act to adopt a standard for flavored malt beverages that limits the alcohol content derived from alcohol flavoring and other materials to less than 1/2% alcohol by

volume (0.5% alc/vol). Both the IRC and FAA Act contemplate that the alcohol content of malt beverages is derived from the natural fermentation of malt, hops or other products and not from the addition of distilled spirits. Accordingly, TTBS proposed rulemaking correctly classifies beer or malt beverage products containing 0.5% or more alcohol by volume that is derived from distilled spirits, or from distilled spirits in the form of flavors or other materials, as a distilled spirits product. TTBS proposed rulemaking that requires malt beverages containing alcohol derived from added flavors or other ingredients must list the alcohol content of a flavored malt beverage on its label is appropriate and supported by the Association. Consumers are easily confused by the current brand names and labeling for distilled spirits and flavored malt beverages. The proposed rulemaking requiring labeling of the alcohol content and any additive containing alcohol best serve the consumer by identifying the alcohol content of the flavored malt beverage and that the alcohol content is derived from the addition of distilled spirits and not the natural fermentation

that the proposed TTB rulemaking may require amendment of existing statutory definitions and/or new statutory definitions for the Montana Alcohol Beverage Code, and may require rulemaking by the Montana Department of Revenue. However, the Association believes that the State of Montana could implement TTBs proposed rulemaking upon adoption by TTB for purposes of taxation and distribution of flavored malt beverages. Industry representatives for flavored malt beverages are in the best position to estimate for TTB the time periods required by the industry for complying with production, labeling, and advertising requirements under TTBs proposed rulemaking. In summary, the Liquor Store Owners Association of Montana supports the Treasury Department and TTB in the proposed rulemaking classifying any beer or malt beverage product containing 0.5% or more alcohol by volume that is derived from distilled spirits, or from distilled spirits in the form of flavors and other materials, as a distilled spirits product.